

DETAILED ACTION

Receipt is acknowledged of applicant's amendment and remarks, filed on 9 March 2010.

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Status of the Claims

Claims 1-17, 20, 22, 23, 26, 31, 33, 34, 37, and 41 are cancelled. Claims 18, 19, 21, 24, 25, 27-30, 32, 35, 36, 38-40, 42, and 43 are currently pending and rejected.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 19, 21, 24, 25, 27-30, 32, 35, 36, 38-40, 42, and 43 remain rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,994,264 ("Verdon").

Verdon, et. al. teach a method of making a press molded cosmetic composition (see col. 1, line 67 – col. 2, line 2) comprising:

- the fatty emulsion (solvent and fats) of instant claims 18(a'), 29(a'), 42(a'), and 43(a') (see Example, col. 4, line 65 – col. 5, line 23; Example, col. 4, line 65 – col. 5, line 23) with water as a solvent (see col. 2, lines 3-4);

- the pearly, synthetic, and natural pigments and inert powders of instant claims 18(a"), 29(a"), 42(a"), and 43(a") (see col. 3, lines 54-61 and example);
- the mixing of instant claims 18(b), 29(b), 42(b), and 43(b) (see Example, col. 4, line 65 – col. 5, line 23) with a fatty emulsion to coloring powders proportion of about 50/50% by weight (see col. 6, line 20);
- the extruding of instant claims 18(c), 29(c), 42(c), and 43(c) (see Example, col. 4, line 65 – col. 5, line 23);
- the drying of instant claims 18(d), 29(d), 42(d), and 43(d) (see col. 4, lines 32-36);
- the stearate of instant claims 19 and 30 (see Example, col. 4, line 65 – col. 5, line 23);
- the preserving agents of instant claims 21 and 32 (see col. 3, lines 63-66);
- the extruder of instant claims 24 and 35 (see col. 4, line 28);
- the drying temperature and humidity of instant claims 26 and 37 (see col. 4, lines 34-36);
- the cosmetic of instant claims 27 and 38 (see Example, col. 4, line 65 – col. 5, line 23);
- the blusher or eye shadow of instant claims 28 and 39 (see col. 1, line 17);
and
- the sizing of instant claims 40, 42, and 43 (see col. 4, lines 11-13).

The paste is extruded at a temperature of about 10 of 35 degrees Celsius in a standard cosmetic powder compression molding device under standard cosmetic powder molding conditions followed by drying at a temperature of 40 to 55 degrees Celsius (see col. 4, lines 28-35).

Verdon explains that the disclosed invention is beneficial because it avoids the disadvantages of loose powder, such as messiness, spillage, etc. (see col. 1, lines 11-14).

Regarding the extrusion of the paste to obtain a semi-solid extruded product, and the drying of said semi-solid extruded product (see claims 18(c), 29(c), 42(c), 43(c), 18(d), 29(d), 42(d), and 43(d)), Verdon teaches that the paste (i.e. paste being a semi-solid product) is extruded at low temperature (10-35 degrees Celsius) (see col. 4, lines 28-29) and that the resulting composition is molded into the desired shape and dried at a higher temperature (40-55 degrees Celsius) (see col. 4, lines 32-35), suggesting that the composition remains in semi-solid state after extrusion and before drying, since it is moldable.

The Verdon reference does not explicitly recite the oven of instant claims 25 or 36, or the temperature and humidity ranges of claims 18, 29, 42, and 43. However, it recites drying at temperatures of about 40-55 degrees Celsius with a final moisture content of about 0.25 to 7% (see col. 4, lines 34-36). It is inherent that the molded composition would only be dried at such high temperatures in an oven.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to disclose process of making a make-up cosmetic comprising

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mixing a fatty emulsion and coloring powders, extruding the resulting paste, drying and sizing the extruded product, as taught by Verdon. One of ordinary skill in the art at the time the invention was made would have been motivated to use such a process because it results in a product which does not have the disadvantages of loose powder, as explained by Verdon.

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Response to Arguments

Applicant's arguments filed on 9 March 2010 have been fully considered but they are not persuasive.

Applicant argues that the paste that is extruded in Verdon is almost liquid (wet) and the paste is extruded in an almost liquid form in a molding device (see remarks, page 7). Examiner respectfully submits that a paste by definition is a product in a semi-solid state. Applicants are not claiming a particular water-content of the composition that is extruded and dried, only that it is semi-solid. Examiner respectfully submits that the paste taught by Verdon reads on the instant claims as they are currently constructed.

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HASAN S. AHMED whose telephone number is (571)272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Wax can be reached on (571)272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/H. S. A./
Examiner, Art Unit 1615

/Humera N. Sheikh/
Primary Examiner, Art Unit 1615